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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,090	06/21/2002	Stephen Arkinstall	220316USOPCT	7121

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EXAMINER

CHANG, CELIA C

ART UNIT	PAPER NUMBER
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1625

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/088,090
Filing Date: June 21, 2002
Appellant(s): ARKINSTALL ET AL.

MAILED
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GROUP 1600

Daniel J. Pereira
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed Aug. 29, 2006 appealing from the Office action mailed Jun 29, 2006.

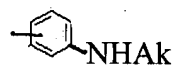
Art Unit: 1625

The New Matter Rejection under 35 USC 112 1st paragraph

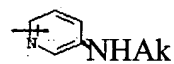
Appellants argued that page 11, lines 10-25 provided literal support and recited the paragraphs on page 2 of the supplemental brief. The structure of such substituted R6 is hereby illustrated, R6 is alkyl substituted by e.g.

Definitionstructure

C1-C6 alkylaminoaryl--



C1-C6-alkylamino heteroaryl--



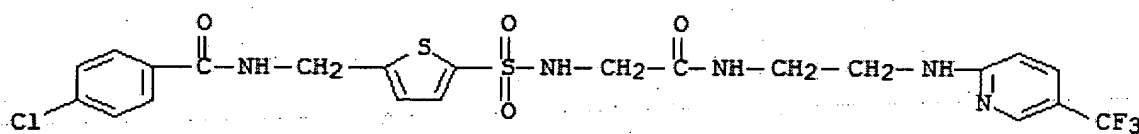
Cyclic C4-C8alkyl-- containing 1-3 heteroatom.....



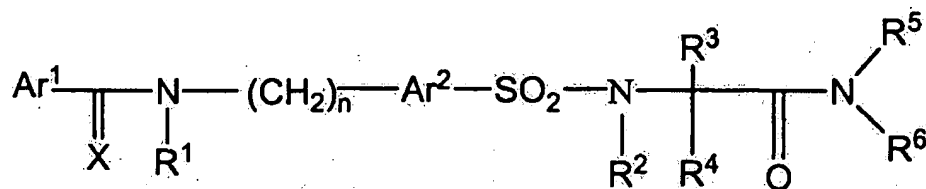
Unsubstituted or substituted aryl-- or heteroaryl--



Compound of claim 9 is,



which is when compounds of claim 1 :



Ar1	X	R1	n	Ar2	R2	R3/R4	R5	R6
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Sub. Aryl	O	H	1	thienyl	H	H/H	H	C2-heteroaryl-amino.
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Therefore, the instant claim 1 limiting to R3 and R4 both being hydrogen in combination with the rest of the scope of claim 1 is clearly new matter for which no compound being drawn to R6 is C1-C6 alkylaminoaryl, C1-C6-alkylamino heteroaryl, Cyclic C4-C8alkyl containing 1-3 heteroatom....., unsubstituted or substituted aryl or heteroaryl, can be found because all the compounds have R6 being heteroarylaminomethyl which was not found on page 11.

The objection under 37 CFR 1.75c

The comparison of structural delineation in the new matter section will be self evidence for the impropriety of dependency since claim 9 does not read on the base claims.

The Obviousness Rejection in view of US '149

A detailed structural comparison of the exemplified compounds of US '149 with comparison to the instant claims have been made in the Examiner's Answer (see p.10 Ex. Answer). Appellants' argument that the US '149 requires polyamine groups does not obviate the obviousness in the established prima facie case suggested by the reference. An investigation of the compounds of claim 9 for which one of the compound was displayed in the new matter section, it will be self evident that whether appellants called the compounds polyamine or not, the exemplified compound contain multiple amines, thus, chemically are polyamines.

The rejection under 35 USC 112 1st paragraph

It has been clearly made of record that the analysis of the enablement issue under 35 USC 112 1st paragraph during prosecution and in the brief, has been made based on *factual evidence*. The reliance of Appellants of *two single species*, explicitly excluded by the generic description;

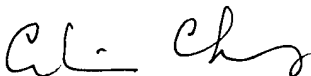
Art Unit: 1625

in a screening test which is *devoid* of any information as to its indication of up or down regulation; is *factual evidence* for deficiency of enablement supporting the claimed scope.

Whether Appellants relied or withdrawn the arguments with respect to the data collected in the specification does not obviate the deficiency.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Celia Chang
Primary Examiner
Art Unit 1625

Conferee


Thomas McKenzie, Ph. D /SPE, AU 1625
Joseph McKane, SPE AU 1626